

Secured Transactions, Law 631
University of Illinois College of Law
Fall Semester 2019
Professor Lawless

Syllabus

Course Goals

Secured Transactions is about what happens when a creditor has the right to seize a debtor's property in repayment of the debt. Sometimes the debtor and creditor have created this right through contract, and other times the creditor has this right through operation of law. Often, the creditor will have to fight other claimants to the property because the creditor's rights will only be salient when the debtor has failed to repay the debt. When that happens, the debtor is often in default on other obligations. As you will learn, the course has two major parts: creditors' rights against debtors, and creditors' rights against the rest of the world.

Secured Transactions law affects both individuals and large corporations. The course will cover automobile loans to a consumer and multibillion-dollar accounts receivable financing. The topic also is covered in many state bar exams (including Illinois). No matter what your post-law school aspirations happen to be, this course will make you a more effective professional.

Traditionally, this course is one of the bread-and-butter commercial law courses in the curriculum. The textbook emphasizes a systems approach. It is not enough to memorize rules. Rather, an effective lawyer understands how secured transactions fit into the broader financial system. Certainly, Article 9 of the Uniform Commercial Code (UCC) will play a central role in our studies, but we will cover all sorts of transactions. Also, we will not pretend that commercial law and bankruptcy law are separate things. In practice, a creditor's legal rights often only become important during financial distress, and if one wants to know the practical consequences of the creditor's power one must know the results in bankruptcy court.

There are two pedagogical ideas animating my approach to this course. The teaching notes for the book well express the first idea:

We readily confess to being dyed-in-the-wool Legal Realists, who see law not as a "brooding omnipresence in the sky" but as "what officials do about disputes." We are more interested in the empirical reality of secured credit than myths perpetuated by armchair theorists. To our mind, secured credit *is* what secured credit *does*.

The second idea is more of a pedagogical point and comes from the book's introduction:

We have written this book with an attitude. Legal education has a way of taking simple things and making them seem complex. In this book we have made every effort to do the opposite—to make this complex, technical subject as simple as possible. This is a course for second- and third-year students who have already mastered reading cases. The threshold intellectual task here is to read statutes; the ultimate intellectual task is how law functions together with other elements as a law-related system.

You will find this course to stress both of these ideas. Our class discussions will be problem based and lawyering focus.

Required Reading

There are two required texts for this course. The textbook is LYNN M. LOPUCKI, ELIZABETH WARREN & ROBERT M. LAWLESS, SECURED TRANSACTIONS: A SYSTEMS APPROACH (Aspen, 8th ed. 2016). Because of its emphasis on lawyering solutions, this textbook is my favorite textbook of all time, and I was honored to be asked to join the eighth edition.

The other required text is the statutory supplement that goes with this textbook: ELIZABETH WARREN, BANKRUPTCY AND ARTICLE 9: STATUTORY SUPPLEMENT, 2018 EDITION (Aspen 2018). Alternatively and completely at your option, you can use LYNN M. LOPUCKI & ELIZABETH WARREN, BANKRUPTCY AND ARTICLE 9: STATUTORY SUPPLEMENT, VISILAW MARKED VERSION (Aspen 2018). The difference between the two versions is that the latter is marked up in a way intended to make it easier to read the statutes. It is entirely up to you which version you want to use. I posted on the *Credit Slips* blog about the idea behind Visilaw: <https://tinyurl.com/y9xkg2uk>.

As another alternative, you also may use RONALD MANN, ELIZABETH WARREN & JAY WESTBROOK COMPREHENSIVE COMMERCIAL LAW, 2018 STATUTORY SUPPLEMENT. This text contains all the statutes in the shorter bankruptcy and Article 9 statutory supplement plus some additional material.

Class Blog

I have created a class blog at <http://www.creditslips.org/securedtransactions/>. As you can tell from the URL, this blog is being hosted on the same server as the *Credit Slips* blog. If you have an interest in bankruptcy and credit issues, you may find *Credit Slips* informative (<http://www.creditslips.org>). Both *Credit Slips* and I also have Twitter feeds at @CreditSlips and @BobLawless1.

You should check the class blog periodically, and you will be responsible for the content posted there. If you use software to monitor the RSS feed of other blogs, I would recommend adding the class blog to the list of sites that software monitors.

The class blog will be used to post the weekly assignments and any documents connected with the course (such as this syllabus). The blog also will be used as a supplement to class discussion.

I have tried to set up the blog so it will not get picked up by any search engines or public directories – make a note of the URL – but there is no such thing as a private web site. Be sure not to leave any comments on the blog you would not want the whole world to read.

Course Work, Grading & Final Examination

Your grade in the class will be based on a final examination and on a course problem. The problem will be graded on a pass/fail basis and will count for 10% of your overall grade. Thus, the problem counts roughly the same as one short essay on one of my final exams. Details about the problem will be in a separate handout posted on the course blog.

The examination will be an open-book exam with some restrictions. During the examination, you may consult the statutory supplement you have used for the course, the class textbook, and any course outlines or notes that you have prepared or played a substantial role in preparing (e.g., you were part of a study group). LLM students whose first language is not English may use a dictionary. You may not consult any other materials during the exam. You may not be connected to the Internet.

If you have questions about what may be used on the final exam, you are strongly encouraged to ask me before the final exam.

I will allow students to take the exam on the makeup date only (i) if there is a direct conflict with the final exam in another class (although the final exam scheduling process makes that exceedingly unlikely), (ii) if you have two in-class final exams in the same day or have in-class final exams on three consecutive days, or (iii) if there is an emergency situation that would materially affect your performance on the exam.

Class Attendance

I strongly recommend you attend class every day. I will send around an attendance sheet at the beginning of every class. If you miss class more than eight times in the semester, you will be dropped from the course. There will be no excused absences. In essence, you may miss class eight times for any reason whatsoever. If you miss class nine times, you will be dropped even if the ninth absence might be for an exceptionally good reason. Anyone who has missed nine classes will have missed almost one-third of the semester.

Makeups

Class is canceled on Monday, October 14 as I will be in Chicago, speaking at the American Bankruptcy Institute's Wedoff Seventh Circuit Conference on Consumer Bankruptcy.¹ There will be

¹If you are possibly interested in bankruptcy law as a career, I recommend the ABI's \$20 student membership that gives you the same benefits as any other membership (which costs \$350). You will get access to their updates and publications, and it is a great way to see if the field might interest you. Also, you will be up to date with developments in the field, which can impress employers at interviews. You can find more information here: <https://www.abi.org/membership>.

a makeup class from 12:00 – 1:15 PM on Wednesday, October 16, in Room A. Makeups and class cancelations are a hassle for everyone, and your understanding is appreciated. Professional service such as this raises the profile of the law school as well as develops contacts that are sometimes helpful when students are looking for jobs.

Class Participation

I reserve the right to reward exceptional class participation or penalize poor class participation in determining the final grade by raising or lowering a grade at the margin (e.g., a B- might become a B or vice versa). In most semesters I do not make any adjustments.

Computers in the Classroom

During class, you may be connected to the Internet only for purposes related to class. This would include, for example, looking at a court opinion we are discussing or searching for information relevant to a point we are discussing. This does not include, for example, reading the news, e-mailing classmates, or sending instant messages. I very much support the use of technology in the classroom and encourage you to be active learners. Like any technology, however, computers can be misused. Please do not let your computer become a distraction to you or your classmates.

Over the summer, I seriously considered banning laptops in the classroom. In the end, I decided to leave the decision to each of you, but I recommend that you do not use a laptop in class. The empirical research suggests a link between laptop usage during class and poorer classroom performance. See Susan Payne Carter, Kyle Greenberg & Michael S. Walker, *The Impact of Computer Usage on Academic Performance: Evidence from a Randomized Trial at the United States Military Academy*, 56 ECON. OF EDUC. REV. 118 (2017); Kaitlyn May & Anastasia D. Elder, *Efficient, Helpful, or Distracting? A Literature Review of Media Multitasking in Relation to Academic Performance*, 15 INT’L J. OF EDUC. TECH. IN HIGHER EDUC. 13 (2018); Pam A. Mueller & Daniel M. Oppenheimer, *The Pen is Mightier Than the Keyboard: Advantages of Longhand Over Laptop Note Taking*, 25 PSYCHOL. SCI. 1159 (2014); and Susan M. Ravizza, David Z. Hambrick, & Kimberly M. Fenn, *Non-Academic Internet Use in the Classroom Is Negatively Related to Classroom Learning Regardless of Intellectual Ability*, 78 COMP. & EDUC. 109 (2014). This literature suggests both that laptops inevitably take us “off task” as well as that handwriting might have benefits in encoding information in long-term memory.

Contact Information

My office telephone is 217-244-6714, and my e-mail is rlawless@illinois.edu. My office phone also rings my cell phone.

Generally, I am on campus during most normal business hours and often in my office (room 225). I do not keep formal office hours, and you are always welcome to come to my office to see if I am available. You are also welcome to email me to make an appointment. My faculty assistant is

Sally Cook (sjcook@illinois.edu or 217-333-9851). Ms. Cook has access to my calendar and often the quickest way to make an appointment is to contact her.

Some Friendly Advice

Secured Transactions principally involves the study of the Uniform Commercial Code and, to a somewhat lesser extent, the U.S. Bankruptcy Code. We also will cover a few other statutes. In addition, the textbook emphasizes problems over cases as the primary teaching tool. Persons new to the material often make one or both of two mistakes in their general approach to the course.

The first mistake is not to give primacy to the statutory texts. I especially see this mistake in students who have just come out of a first year of law school that emphasized judicial opinions and not statutory text. Sometimes this mistake manifests itself as seeing the judicial opinions as the “law.” The statute is the “law” the judicial opinions are interpreting.

Let’s face it—statutory texts can be complex and boring to read. But, they have an inner logic as well as a precision of expression. Careful study of the statutes will yield understanding of the course material and better performance on the examination. You should put in the time to read the assigned statutory material before coming to class. Diligence is key. Although I have worked with these statutes for years, when preparing for class I still typically end up reading the relevant statutory provisions several times over.

The second mistake is not to attempt the assigned problems before coming to class and to see the reason for class as to get the answers to the problems. I will go over the problems in class, but the whole point of the problems is for you to learn by attempting to answer them. It is vitally important that you attempt to answer the assigned problems before coming to class as the problems are the primary way you will learn the material. I make this point every time I teach the class. But, semesters are long, and you all are busy people. At some point, you will be tempted to skip the problems. Don’t.

Note the word “attempt.” If you have the right answer before class, that is fine, but the point of the problems is to learn the material. Class discussion is not a quiz show where the goal is to hand out fabulous prizes to the person with the right answers to the problems. The problems can be hard and often will not have an obvious answer. They are tools to help you learn. If you have not tried the problems before class, you will not get as much out of class discussion.

Also, the cases in the book are meant to be illustrative. Indeed, the cases were chosen because they are typical and illuminating not because they were unusual and interesting. We do not select cases for the book that we think were wrongly decided. I will not discuss how cases “should have come out” or ask you to deconstruct the judge’s reasoning. Focus on the problems and statutes, not the cases. The problems and the course emphasize practical lawyering—for example, sometimes the point of a case is to set up a problem on how to avoid having to litigate over a particular matter.

Course Outline

The book is divided into assignments that were divided into segments designed for a fifty-minute class. Our class meets for seventy-five minutes. I will post weekly assignments on the course blog and try to adjust as we go along. Because of the textbook's design, I may sometimes have to ask you to read ahead a little bit.

Here is a general outline of our course coverage. This generally follows the outline of the textbook. For more detail, consult the textbook's table of contents:

- I. Creditors & Debtors
 - a. Creditor's Remedies Under State Law
 - b. Creditor's Remedies in Bankruptcy
 - c. Creation of a Security Interest
 - d. Default

- II. Creditors & Third Parties
 - a. Perfection
 - b. Maintaining Perfection
 - c. Priority
 - d. Competing Rights in Collateral

The idea here is that we begin with coverage in Part I of the rights between creditors and debtors. Part II of the course emphasizes fights between creditors, often called "priority disputes," about rights in the collateral. The introduction to the book at pp. xxxi – xxvii contains an overview of the course coverage, some basic background information, and the book's pedagogical philosophy. We entirely rewrote it for the eighth edition with the idea that students would read it before the first class as an overview. I strongly recommend that you read it.